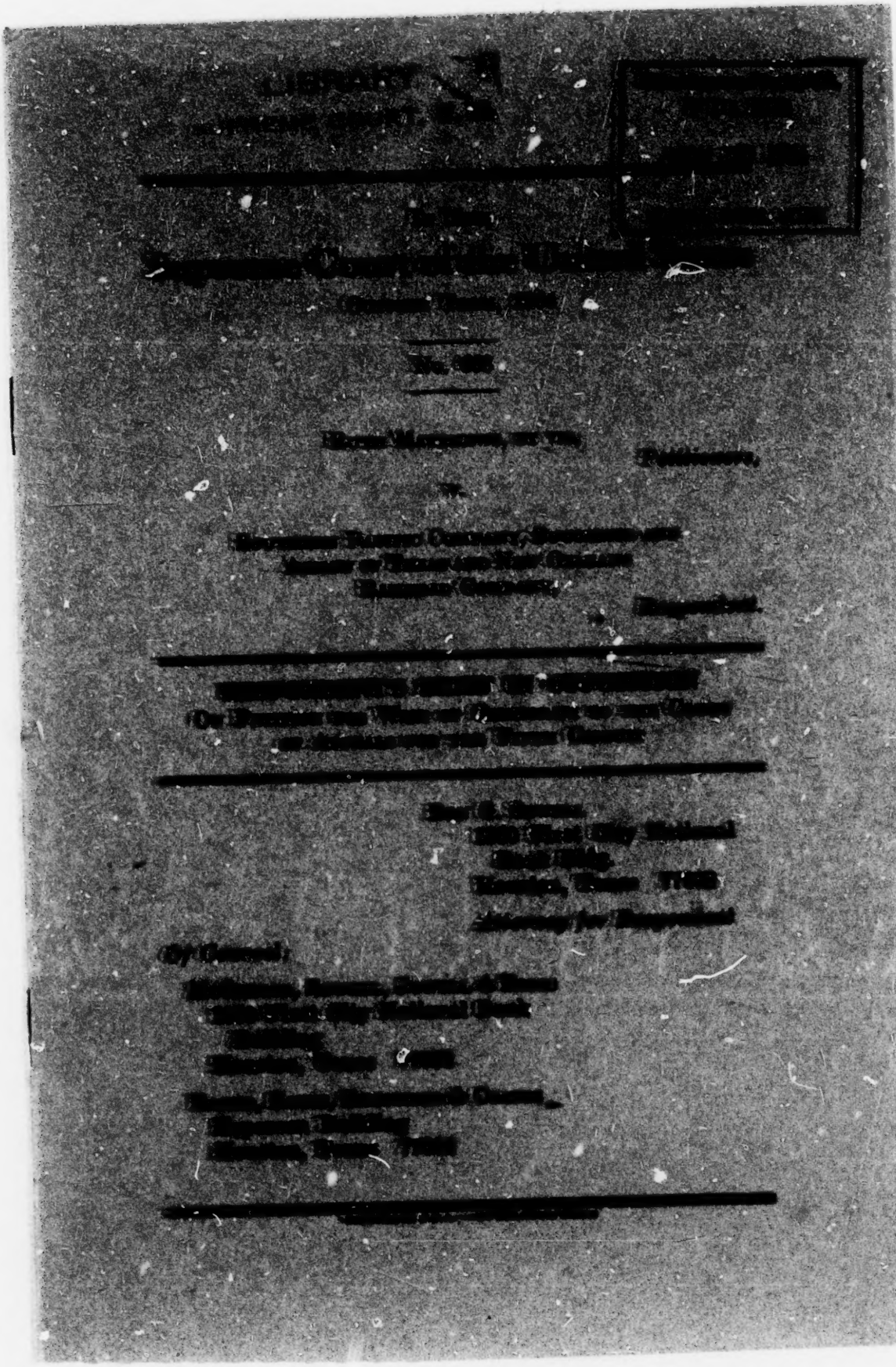

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In The

Supreme Court of the United States

October Term, 1964

No. 663

Ruth Matthews, et vir,

Petitioners,

v.

Southern Pacific Company, Successor and Assign of Texas and New Orleans Railroad Company,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

On Petition for Writ of Certiorari to the Court of Appeals for the Fifth Circuit

The petition for writ of certiorari should be denied.

This is a run-of-the-mill railroad crossing accident diversity case.

The Court of Appeals, after a careful review of the entire record, has correctly directed that the trial court should enter judgment for respondent notwithstanding the verdict and that the trial court erred as a matter of law in not sustaining respondent's motion for a directed verdict.

There Is No Conflict with the Decisions of this Court

Petitioner contends that the decision of the Court of Appeals in this case is "squarely in conflict" with *"Parsons* v. *Bedford,* 3 Pet. 433, 7 L. Ed. 732 and *Lillian Slocum* v.

New York Life Insurance Company, 228 U.S. 364, 33 S. Ct. 523, 57 L. Ed. 879".

It is true that in 1913 in the *Slocum* case this court held that under the circumstances of that case entry of a judgment contrary to the verdict was a violation of the Seventh Amendment. The *Slocum* case was much criticized[1] but whatever may have been the intent of the court in that case, the rule was clarified, if not qualified, in 1935 in *Baltimore & Carolina Line* v. *Redman*, 55 S. Ct. 890, 295 U.S. 654, 79 L. Ed. 1636.[2] The *Redman* case was a personal injury case. The defendant, at the conclusion of the evidence, moved for a directed verdict and a dismissal of the complaint on the ground that the evidence was insufficient to sustain a verdict for the plaintiff. The court expressly reserved decision on these motions and submitted the case to the jury. The jury returned a verdict for the plaintiff. Thereafter the court denied the defendant's motions and accordingly entered judgment for the plaintiff. Upon appeal, the Circuit Court of Appeals held the evidence insufficient to support a verdict for the plaintiff, but believing the *Slocum* case a controlling precedent, ordered a new trial rather than direct a verdict for the defendant (70 F. 2d 635, CCA 2 1934). Upon certiorari to the Supreme Court it was held that since the trial court had reserved decision on the motions of defendant, the circuit court upon a finding of insufficiency of evidence should have directed a proper judgment rather than remand the case for a new trial. The court based its decision on the fact that at common law a court could direct a verdict for one party despite a jury verdict for the other where the court had reserved decision on a question of law relating to the sufficiency of the evi-

[1] See, for example 8 Ill. L. Rev. 287, 381, 465; 26 Harv. L.R. 732; 31 Harv. L.R. 669; 63 U. Pa. L.R. 585 and 23 Yale L.J. 454.

[2] Noted in 20 Minn. L. Rev. 82, 14 N.C.L. R. 97, 45 Yale L.J. 166.

dence. Since such a procedure was allowed by common law, its use by the Federal court was held not violative of the Seventh Amendment. The *Slocum* case was distinguished on the ground that there the court had made no reservation of power to grant or deny, subsequent to the jury verdict, a motion for a directed verdict. This was a distinction which afforded a means of reconciling the *Slocum* case without directly overruling it. However, the subsequent adoption of Rule 50(b), Federal Rules of Civil Procedure, has substituted a fiction for the reservation which was held to distinguish the *Slocum* case from the *Redman* case. Rule 50(b) is as follows:

> "Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal question raised by the motion."

Under the *Redman* case the Court of Appeals in this case clearly had the right to direct the entry of a judgment for respondent and in view of the provisions of Rule 50(b) there is no basis upon which to assert a conflict between the holding of the Court of Appeals and the *Slocum* case.

There Is No Constitutional Question Presented

The *Redman* case is a complete answer to petitioners' contention that the Court of Appeals deprived them of constitutional rights under the Seventh Amendment.

In personal injury actions if the evidence shows as a matter of law that the plaintiff's negligence was a proximate cause of his injuries the defendant is entitled to a judgment notwithstanding the verdict. *Brinson* v. *Illinois Cen. R.R. Co.*, 241 F. 2d 494 (CCA 5th, 1957); *Atlantic Coastline R.R. Co.* v. *Mitchell*, 157 F. 2d 880 (CCA 5th,

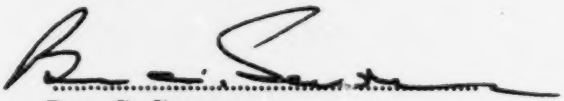
1946); *Ferro Concrete Construction Co.* v. *United States*, 112 F. 2d 488 (CCA 1st, 1940).

Certainly, it is asking too much of this Court to review the entire record for the purpose of determining that the Circuit Court properly held that as a matter of law the petitioners were guilty of contributory negligence in the violation of a Texas statute requiring them to stop before proceeding over a railroad crossing.

CONCLUSION

WHEREFORE, for the reasons set forth above, the petition of certiorari should be denied.

Respectfully submitted,



BEN G. SEWELL
1300 First City National
Bank Bldg.
Houston, Texas 77002
Attorney for Respondent

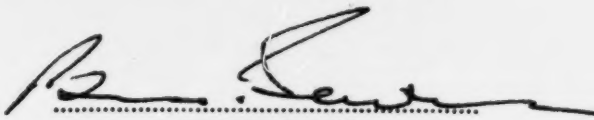
Of Counsel:

McGREGOR, SEWELL, JUNELL & RIGGS
1300 First City National Bank
Building
Houston, Texas 77002

BAKER, BOTTS, SHEPHERD & COATES
Esperson Building
Houston, Texas 77002

CERTIFICATE OF SERVICE

Counsel for petitioners, Hon. Billy Hunt, P. O. Box 772, Center, Texas, and Ramey, Brelsford, Hull & Flock, Citizens National Bank Building, Tyler, Texas and McDaniel Hunt & Fairchild, Payne Building, Center, Texas, have been mailed copies of this, Respondent's Opposition to Petition for Writ of Certiorari, at their respective post office addresses.



Ben G. Sewell

Attorney for Appellant